

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Diane Clayton and Rebecca
Rutter

Application No. 10/561,713

Filed: December 21, 2005

Confirmation No. 1023

For: INFLAMMATORY DISEASE
TREATMENT

Examiner: not yet assigned

Art Unit: 1623

Attorney Reference No. 5585-72843-01

FILED VIA EFS ON
November 7, 2006

BOX MISSING PARTS
COMMISSIONER FOR PATENTS
P O BOX 1450
ALEXANDRIA, VA 22313-1450

DECLARATION OF RITA KHANNA UNDER 37 C.F.R. 1.47

1. I, Rita Khanna, Ph.D., J.D., am the Director of Intellectual Property Management for Advanced BioNutrition Corp. in Columbia, Md. Advanced BioNutrition (Europe) Limited (the assignee of the present application), is a wholly owned subsidiary of Advanced BioNutrition Corp. .

2. Based on personal knowledge, I provide this Declaration to assert that named inventor Rebecca Rutter refuses to sign a Declaration for this application, after repeated *bona fide* attempts requesting her to do so.

3. Applicants' representative, Sheree Lynn Rybak, Ph.D. reported to our counsel in the United Kingdom (Robert Docherty) on April 18, 2006 the Notice of Missing Requirements dated April 7, 2006 and enclosed a Combined Declaration and Power of Attorney for Patent Application (Declaration) to be signed by inventors Clayton and Rutter (Exhibit A).

4. The Notice of Missing Requirements dated April 7, 2006 and a Combined Declaration and Power of Attorney for Patent Application was forwarded to our office, and we sent the documents including the Declaration to Rebecca Rutter for signature in August 2006.

5. Rebecca Rutter responded via e-mail on August 16, 2006 with some questions, but appeared to be willing to sign the documents provided Advanced BioNutrition Corp. covered her cost etc. (see Exhibit B).

6. I sent Rebecca Rutter an e-mail reply on August 24, 2006, and stated that Advanced BioNutrition Corp. would reimburse Ms. Rutter for any costs associated with signing of the documents (see Exhibit B).

7. On September 1, 2006, Ms. Rutter requested a contract (see Exhibit B) between herself and Advanced BioNutrition Corp.

8. Before Advanced BioNutrition Corp. could send a contract to Ms. Rutter, we received a letter from her attorney Trevor Thompson (Exhibit C).

9. Joi Rivas, the Executive Assistant to CEO of Advanced BioNutrition Corp., sent a reminder e-mail to Rebecca Rutter last week. Rebecca Rutter replied via e-mail on November 3, 2006, and informed us that for all future dealings with her we should contact her attorney (see Exhibit D).

10. I called Trevor Thompson to discuss this matter on November 6, 2006, but he informed me that he will only be able to send Rebecca Rutter's proposal in the next couple of weeks. Therefore, we are unable to have inventor Rebecca Rutter sign the Declaration by the November 7, 2006 deadline.

11. The last known address I have for Rebecca Rutter is Cells4Life, The Sussex Innovation Centre, Science Park Square, Falmer, Brighton, Sussex BN1 9SB United Kingdom, phone number 011 44 870 112 399, and e-mail rebeccarutter@gmail.com.

12. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Rita Khanna, Ph.D., J.D.

November 7, 2006

Date



KLARQUIST SPARKMAN, LLP

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April 18, 2006

FAXED
2:15pm

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TOTAL NUMBER OF PAGES: 8

ORIGINAL FOLLOWS? ☒ YES ☐ NO *Dpm*

Robert C. Docherty, Ph.D.
Harrison Goddard Foote
31 St. Saviourgate
York YO1 8NQ
UNITED KINGDOM

RE: U.S. Patent App. No. 10/561,713
For INFLAMMATORY DISEASE
TREATMENT
Filed December 21, 2005
Your Ref. No. RCD/P102877US1
Our Ref. No. 5585-72843-01

Dear Rob:

Enclosed is a copy of a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) dated April 7, 2006 for the above-identified patent application. A response to the Notification (i.e., submission of the signed Combined Declaration and Power of Attorney for Patent Application (Declaration)) must be submitted to the PTO by **June 7, 2006**, to avoid payment of extension fees. This deadline can be extended to as late as November 7, 2006 with the payment of monthly extension fees.

On January 19, 2006, we sent Declaration and Assignment documents to you for execution by the inventors. However, as we have not yet received the signed documents from you, we enclose fresh copies of the documents for your use as needed.

We look forward to receiving the signed documents from you. In the meantime, please let us know if you have any questions about the enclosed Notification.

Sincerely,

KLARQUIST SPARKMAN, LLP

Sheree Lynn Rybak, Ph.D.
sheree.rybak@klarquist.com

SLR:dm

Enclosures

cc: William D. Noonan, M.D.
515623.doc

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Forwarded Message:

Subj: **RE: Documents to sign for ABN**
Date: 9/1/2006 6:20:44 AM Eastern Standard Time
From: rebeccarutter@gmail.com
To: khannarita@aol.com
Sent from the Internet (Details)

Dear Rita

I have located 2 companies with Notaries who are willing to countersign the documents, neither has worked for ABNE / ABN Corp and so are asking that payment be made to them at the time of the signing. Does ABN have a suitable Notary with credit facilities in the UK who could be used? If not then the option seems to be to get a cheque or bank transfer in place to the relevant company prior to the signing occurring. There is no way I can fund the required payment, even with the costs being reimbursed.

Regarding reimbursement of my costs and time, I would like to have a proper contract in place for this, so in the event that people / matters change there is a proper agreement in place that can be referred to. Can ABN please send a suitable contract over.

Best regards
Rebecca Rutter

-----Original Message-----

From: khannarita@aol.com [mailto:khannarita@aol.com]
Sent: Thursday, August 24, 2006 7:56 PM
To: rebeccarutter@gmail.com
Cc: DHA4ME@aol.com
Subject: Re: Documents to sign for ABN

Dear Rebecca:

Here is my response to your questions:

1. The signature should be done in front of a Notary
2. David has agreed to reimburse for any costs incurred by you for this patent application

I hope you will be able to send the signed documents to us ASAP. Please let me know if you have any further questions relating to this matter.

Best regards,

Rita Khanna, Ph.D., J.D.
240-505-8033

-----Original Message-----

From: rebeccarutter@gmail.com
To: jrivas@advancedbionutrition.com

Cc: KhannaRita@aol.com; RKhanna@abn-corp.com
Sent: Thu, 24 Aug 2006 7:52 AM
Subject: RE: Documents to sign for ABN

Dear Joi and Rita

I have not had a response from the email I sent last week. Can you please advise of the answers to my questions?

Best regards
Rebecca Rutter

-----Original Message-----

From: Rebecca Rutter [mailto:rebeccarutter@gmail.com]
Sent: Wednesday, August 16, 2006 10:12 AM
To: 'jrivias@advancedbionutrition.com'
Cc: 'Rita Khanna'; 'RKhanna@abn-corp.com'
Subject: RE: Documents to sign for ABN

Dear Joi and Rita

I receipted the documents today, I have 2 questions:

1. Diane's signature was witnessed by a Swiss Notaire, is this a requirement for me also? Could I use someone - for instance Mike Herd the Director of SINC to witness my signature? Please give guidance as to the requirements of the witness.
2. Regarding the section that states I will communicate any facts and testify as appropriate. I do not have a problem with this, but as I am no longer employed by either ABN Corp or ABNE Ltd I need to have a consultancy contract or other agreement with these entities which details how my time for any such activities would be reimbursed (given that I am employed and would have to take time off work to attend to these matters) and that any expenses incurred by myself (e.g. for travelling, food etc) would be covered as appropriate.

Many thanks for your help in this matter. Once these are resolved I will be able to sign and return the documents to you.

Best regards
Rebecca Rutter

-----Original Message-----

From: Joi Rivas [mailto:jrivas@advancedbionutrition.com]
Sent: Monday, August 14, 2006 1:32 PM
To: Rebecca Rutter
Cc: Rita Khanna; RKhanna@abn-corp.com
Subject: Documents to sign for ABN

Rebecca:

I will send out the documents today. What I needed was for you to confirm your address so I could send them to the correct place. I will go ahead and send them to the Innovative Center to your attention along with a return envelope for prompt return. Also, is this the address you would like for us to send all correspondence to you in the future? If no, please forward the one we should use. Thank you.

Joi Rivas, MBA
Executive Assistant to CEO
Advanced BioNutrition Corp.
7155 Columbia Gateway Drive
Suite H
Columbia, Maryland 21046
410-730-8600
410-730-9311 (Fax)

-----Original Message-----

From: Rebecca Rutter [mailto:rebeccarutter@gmail.com]
Sent: Monday, August 14, 2006 6:19 AM
To: jrivas@advancedbionutrition.com
Cc: RKhanna@abn-corp.com
Subject: RE: Confirming address

Dear Joi

I have not received any information from you as yet. I have checked with the Innovation Centre staff and it has not been receipted here. Can you please confirm if this has been sent? If so by what method? Can you track it?

Thanks

Best regards
Rebecca Rutter

-----Original Message-----

From: Joi Rivas [mailto:jrivas@advancedbionutrition.com]
Sent: Thursday, August 03, 2006 5:58 PM

To: rebeccarutter@gmail.com
Cc: RKhanna@abn-corp.com
Subject: Confirming address

Rebecca:

It was nice speaking with you on the phone recently. I hope things are going well for you.

I have two documents that I need to send to you for signature and prompt return to us. These documents already have been signed by Diane Clayton.

When you receive this please sign each document where tabbed for your signature, and please also provide a Witness signature on the appropriate pages in each document. The address I currently have for you is:

Cells4Life
The Sussex Innovation Centre
Science Park Square
Falmer, Brighton, Sussex BN1 9SB
U.K.

If you would like for me to use a different address please forward it to me by replying to this email.

Thank you very much.

Joi Rivas, MBA
Executive Assistant to CEO
Advanced BioNutrition Corp.
7155H Columbia Gateway Drive
Columbia, Maryland 21046
410-730-8600
410-730-9311 (fax)

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BY FACSIMILE

FACSIMILE NUMBER: 001 410 730 9311

NUMBER OF PAGES: 1

This facsimile message is confidential. If you are not the intended recipient, please inform us immediately and return the message to us by mail. You must not copy the message or disseminate its contents in any way. Likewise, you must not take any action in reliance on the contents of this message.

14 September 2006

CONFIRMATION BY MAIL

Dear Dr Kyle

COPY
CONFIRMATION

International Patent Application No. PCT/GB2004/002707
Title: "INFLAMMATORY DISEASE TREATMENT"
Applicants/Inventors: Clayton, Diane and Rutter, Rebecca
Our ref: A0182GB/TGT

We have been asked to represent Ms Rebecca Rutter in matters relating to the referenced patent application.

We understand that you have requested that Ms Rutter assigns her rights in the present application to Advanced BioNutrition (Europe) Limited (ABNE). However, the invention to which the present application is directed was made by Ms Rutter prior to her engagement as a consultant by ABNE and our client is not prepared to assign her rights in the invention on the terms currently on offer.

We would like to arrange a conference call to discuss acceptable terms and conditions. Are you available for a conference call on Tuesday, 26 September or Wednesday, 27 September?

Yours sincerely

Trevor G. Thompson

Cc: Klarquist Sparkman, LLP (By facsimile – 001 503 595 5301)

5585-72843-01

bjg

Subj: Reply from Rebecca: FW: Inflammatory Disease Treatment Assignment
Date: 11/3/2006 3:07:59 PM Eastern Standard Time
From: jrivas@advancedbionutrition.com
To: KhannaRita@aol.com
Sent from the Internet (Details)

Rita please see Rebecca's message below. I replied to her message and let her know that I would not attempt to contact her again regarding this matter and I would ask that you handle this through her attorney because it's not going to help the situation to offend her further. Seems I've aggravated her by attempting to call her at work Let me know if there's anything else you'd like me to take care of.

Joi

-----Original Message-----

From: Rebecca Rutter [mailto:rebeccarutter@gmail.com]
Sent: Friday, November 03, 2006 2:49 PM
To: jrivas@advancedbionutrition.com; Rkhanna@abn-corp.com; trevor.thompson@thompsongray.com
Subject: Re: Inflammatory Disease Treatment Assignment

Dear Joi

Correspondence regarding this matter should be directed to my patent attorney Trevor Thompson (cc'd on this email). I am very upset that you tried to contact me via my present employer, this matter is between ABN Corp and myself, it does not include my present employer. In future you will please ensure ANY correspondence from ANY member of ABN staff either verbal, email or written regarding this issue is directed to Trevor. You have all relevant contact details for him on the correspondence sent.

Sincerely
Rebecca Rutter

On 03/11/06, **Joi Rivas** <jrivas@advancedbionutrition.com> wrote:
Dear Rebecca:

The Assignment document that I sent to you some time ago regarding Inflammatory Disease Treatment for your signature, I understand that there is some unresolved issue with it at this time. Unfortunately, I believe I sent to you the original document with Dr. Diane Clayton's signature. As we are willing to compromise and resolve any issue with you in order to have your signature on the document and returned to us promptly, we still need that original document returned to us with or without your signature. Please let us know what your terms are for your signature and Notary on the document. If you wish to discuss this further, please contact Dr. Rita Khanna at your earliest convenience at 1-240-505-8033 (mobile), or you may email her at KhannaRita@aol.com or Rkhanna@abn-corp.com.

I did try to reach you by phone today at the Cells4Life number (011 44 870 112 399) but your office was already closed for the day. If you have another number that we can reach you please forward that to me. Thank you and I hope to hear back from you very soon.

Joi Rivas, MBA
Executive Assistant to CEO
Advanced BioNutrition Corp.
7155 Columbia Gateway Drive
Suite H
Columbia, Maryland 21046
410-730-8600
410-730-9311 (Fax)